

The Administrative Law Judge determined claimant suffered temporary injury to his lower spine which resolved. The Judge further determined claimant's cervical spine

complaints were neither caused nor aggravated by the February 15, 2000, accident and denied all benefits. Claimant argues he suffered both injury and permanent impairment to his low back and neck in the accident. Conversely, the respondent argues the Administrative Law Judge's Award finding the claimant did not suffer any permanent impairment should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the briefs, oral arguments and the stipulations of the parties, the Board finds the Administrative Law Judge's Award should be affirmed.

The Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail, and it is not necessary that those be repeated herein. The Board adopts those findings and conclusions as its own.

It is undisputed claimant suffered a work-related accident on February 15, 2000, when he was cleaning a carpet and experienced severe pain in his lower back with numbness starting in his legs. It is claimant's primary contention on review that he also suffered a neck injury.

On February 17, 2000, claimant sought treatment with Robert Gonzalez, M.D. The doctor's record of that visit indicates claimant complained of low back pain exacerbated by activities at work. There was no mention of neck problems. On a follow-up visit with Bryan K. Dennett, M.D., on February 22, 2000, the claimant complained of general achiness localized in the right sacrum and radiating down the back of his right leg. Claimant also reported general achiness radiating up his back into his neck.

On March 2, 2000, claimant filled out an injury questionnaire for the respondent's workers compensation insurance carrier. Claimant was asked to describe his complaints and listed extreme back pain/headaches/numbness in limbs. There was no specific mention of neck pain. Claimant was referred to John P. Estivo, D.O., for treatment on March 20, 2000, and filled out a patient information questionnaire which asked the reason treatment was sought. Claimant wrote "low back pain." No mention was made of neck pain. Dr. Estivo testified claimant never complained of any neck problems during his monthly visits for treatment over the course of four months.

Lastly, at a preliminary hearing held June 8, 2000, the claimant was asked what kind of injury he was alleging and he responded by saying a low back injury. No mention was made of a neck injury and no request for treatment for a neck problem was made.

The Board is not unmindful that claimant initially made some general complaints of achiness in his neck to his physician but as time passed and treatment was provided the claimant neither complained of neck pain nor requested treatment for his neck. The

claimant filled out the two questionnaires and never listed or mentioned a problem with neck pain. Accordingly, the Board affirms the Administrative Law Judge's conclusion claimant did not meet his burden of proof to establish aggravation or injury to his cervical spine.

The Administrative Law Judge further concluded claimant suffered from a minor lumbar spine strain which resolved following Dr. Estivo's treatment. Philip R. Mills, M.D., performed a court ordered independent medical examination. After review of claimant's medical records and examination of claimant, Dr. Mills concluded the claimant had chronic neck and back strain unchanged from 1997. The Board concludes the opinions of Dr. Estivo, the treating physician, and Dr. Mills, the court ordered independent medical examiner, are persuasive and should be adopted.

The Board is not unmindful of the contrary opinions expressed by Dr. Murati. However, as explained by the Administrative Law Judge, it is difficult to accord much, if any weight to those opinions in light of the fact the doctor never assigned any impairment for any alleged cervical problems in his initial report of his examination of claimant.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge John D. Clark dated September 15, 2001, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant
James M. McVay, Attorney for Respondent
John D. Clark, Administrative Law Judge
Philip S. Harness, Workers Compensation Director